

Message Text

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ORIGIN STR-04

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 FEA-01 OIC-02
USIE-00 INRE-00 NSCE-00 SSO-00 STRE-00 AGR-01
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INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01
EPG-02 AID-05 SS-15 ITC-01 TRSE-00 PRS-01 SP-02
OMB-01 /105 R

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AGRIC/JHUDSON (SUBS)
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O P 132329Z JUN 77
FM SECSTATE WASHDC
TO USMISSION GENEVA IMMEDIATE
INFO AMEMBASSY BRUSSELS PRIORITY
AMEMBASSY TOKYO

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US MISSION ALSO FOR USMTN, USEEC

E.O. 11652:N/A

TAGS: ETRD, MTN, GATT

SUBJECT: INSTRUCTIONS FOR JUNE 16 MEETING OF GATT COUNCIL

REF: GENEVA 4457, WOLFF-BRUNGART TELECON 6/10/77

1. REGARDING GATT COUNCIL CONSIDERATION OF ZENITH WP
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REPORT, (REFTEL) U.S. POSITION IS OUTLINED BELOW.

2. U.S. OBJECTIVE FOR COUNCIL MEETING RE ZENITH IS TO
LEAVE OPEN ALL OUR OPTIONS ON HOW TO PROCEED ON THIS
MATTER IN THE FUTURE. FOR U.S. OBJECTIVE TO BE SATISFIED
GATT COUNCIL SHOULD COME TO NO FINAL CONCLUSIONS, MAKE NO
RECOMMENDATIONS, NOR TAKE ANY ACTION ON ZENITH, OTHER THAN

TO SIMPLY NOTE OR ADOPT WP REPORT.

3. U.S. REP SHOULD CONSULT PRIOR TO MEETING OF GATT COUNCIL WITH KEY DELS, CHAIRMAN OF THE COUNCIL, AND GATT SECRETARIAT TO:

(A) STRESS U.S. VIEW THAT WE WISH TO AVOID CONFRONTATION OVER THE ZENITH CASE AND HOPE THAT OUR TRADING PARTNERS WILL CONTINUE TO COOPERATE FULLY WITH US AS WE SEARCH FOR AMICABLE SOLUTIONS TO PROBLEMS RAISED BY ZENITH.

(B) REITERATE THE U.S. POSITION THAT, ALTHOUGH WE CONTINUE TO HAVE NO OBJECTION TO OTHER CONTRACTING PARTIES EXPRESSING THEIR VIEWS ON ZENITH IN A CONSTRUCTIVE AND NON-CONFRONTATIONAL MANNER, THE U.S. CANNOT AGREE TO ANY COUNCIL DECISION TO TAKE ACTION ON THE ZENITH CASE BASED ON THE WP REPORT OR FOR ANY OTHER REASON NOR CAN U.S. AGREE TO ANY FINAL CONCLUSIONS OR RECOMMENDATIONS BY THE COUNCIL. IN THIS REGARD, U.S. REP SHOULD EMPHASIZE THAT U.S. VIEWS THE WP REPORT AS AN ACCURATE ACCOUNT OF WHAT TRANSPIRED IN WP. U.S. DOES NOT VIEW WP REPORT AS A BASIS ON WHICH GATT COUNCIL SHOULD TAKE ACTION SINCE IT MAKES NO RECOMMENDATIONS AND SETS FORTH NO UNANIMOUS CONCLUSIONS. U.S. FAILURE TO COMMENT ON VIEWS OF OTHERS IN WP BECAUSE U.S. CONSIDERED SUCH COMMENTS AS INAPPROPRIATE AT THAT TIME DOES NOT NECESSARILY CONSTITUTE U.S. AGREEMENT WITH VIEWS OF OTHERS.

(C) STATE THAT, IN VIEW OF ABOVE, U.S. PREFERS THAT LIMITED OFFICIAL USE

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GATT COUNCIL MERELY TAKE NOTE OF WP REPORT. IF THIS IS UNACCEPTABLE, HOWEVER, U.S. WILL NOT BLOCK COUNCIL ADOPTION OF REPORT. HOWEVER, U.S. REP SHOULD MAKE CLEAR ITS VIEW THAT ADOPTION OF WP REPORT DOES NOT IMPLY THAT COUNCIL

SHOULD TAKE ANY ACTION BASED ON THE REPORT.

(D) STATE THAT U.S. RECOGNIZES THAT NO CP IS WAIVING ANY RIGHTS UNDER THE GATT IN THIS CASE BY VIRTUE OF THE FACT THAT THE GATT COUNCIL ARRIVES AT NO FINAL CONCLUSIONS, MAKES NO RECOMMENDATIONS, OR TAKES NO ACTION AT THIS MEETING.

4. IN CONSULTATIONS WITH EC AND JAPAN, U.S. REP SHOULD STRESS THAT THE STATEMENTS CONTAINED IN PARA. 13 OF WP REPORT CHALLENGES U.S. SYSTEM OF GOVERNMENT AND WE CANNOT PERMIT IT TO GO UNANSWERED.

IF THE EC AND JAPAN CANNOT ACCOMMODATE OUR CONCERNS

IN-58MB-REASONABLE MANNER 9E.G.

IN SOME REASONABLE MANNER (E.G. FOR EXAMPLE, BY WITHDRAWING PARA. 13 FROM WP REPORT), WE WILL ASK THAT A REBUTTAL PARAGRAPH BE INSERTED IN THE RECORD OF THE COUNCIL. THIS PARAGRAPH READS AS FOLLOWS:

"WE BELIEVE THAT THE COMMENTS REGARDING THE ""DISADVANTAGES OF DOMESTIC PROCEDURES INVOLVING JUDICIAL REVIEW"" EXPRESSED BY CERTAIN MEMBERS OF THE WP AND RECORDED IN PARAGRAPH 13 OF THE WP REPORT CONSTITUTE AN INAPPROPRIATE CRITICISM OF THE U.S. CONSTITUTIONAL SYSTEM OF GOVERNMENT, WHICH IS BASED ON A SEPARATION OF POWERS. JUDICIAL

REVIEW OF ADMINISTRATIVE DECISIONS IS A COMMON ELEMENT THROUGHOUT THE ADMINISTRATION OF U.S. LAWS AND THE JUDICIAL SYSTEMS OF MANY OTHER COUNTRIES. IN ADDITION, UNDER U.S. LAW, JUDICIAL REVIEW IS AVAILABLE TO ALL PARTIES IN A DISLIMITED OFFICIAL USE

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PUTE, THAT IS, IN THE CASE OF TRADE DECISIONS TO BOTH IMPORTERS AND DOMESTIC PRODUCERS."

5. AT THE MEETING OF THE GATT COUNCIL, U.S. REP:

(A) SHOULD STATE THAT THE U.S. SHARES THE DEEP CONCERN OF ITS TRADING PARTNERS WITH REGARD TO THE DECISION BY THE CUSTOMS COURT IN THE ZENITH CASE. IN THIS REGARD, U.S. DEL SHOULD EMPHASIZE THAT THE COURT'S DECISION DOES NOT REPRESENT THE POSITION OF THE EXECUTIVE BRANCH OF THE U.S.G. AND THAT A REVERSAL OF THE COURT'S HOLDING IS BEING VIGOROUSLY PURSUED IN HIGHER COURTS. THE U.S. RECOGNIZES ITS OBLIGATIONS UNDER THE GATT AND WILL DO EVERYTHING POSSIBLE TO HONOR THOSE OBLIGATIONS. FYI. AS IN WP, U.S. DEL SHOULD NOT ENGAGE IN A DEBATE ON THE COURT DECISION ON GROUNDS THAT DOMESTIC PROCEDURES ARE IN PROCESS. END FYI.

(B) MAY URGE, IF APPROPRIATE, COUNCIL TO TAKE NOTE OF WP REPORT. IF THIS UNACCEPTABLE TO OTHER CP'S, U.S. REP SHOULD NOT BLOCK COUNCIL ADOPTION OF REPORT. U.S. SHOULD STATE, HOWEVER, THAT IN ITS VIEW, WP REPORT IS AN ACCURATE ACCOUNT OF WHAT TRANSPIRED IN WP BUT IS NOT A BASIS ON WHICH GATT COUNCIL SHOULD TAKE ACTION SINCE IT MAKES NO RECOMMENDATION AND SETS FORTH NO UNANIMOUS CONCLUSIONS.

(C) SHOULD, FURTHERMORE, OPPOSE AS INAPPROPRIATE AT THIS TIME ANY FINAL CONCLUSIONS, RECOMMENDATIONS, OR ACTION BY THE COUNCIL RE ZENITH CASE MADE BY OTHER CONTRACTING PARTIES AT THE MEETING. U.S. REP MAY, AS APPROP-

RIATE, STATE THAT U.S. RECOGNIZES THAT NO CP IS WAIVING
ANY RIGHTS UNDER THE GATT IN THIS CASE BY VIRTUE OF THE
FACT THAT THE GATT COUNCIL ARRIVES AT NO FINAL CONCLUSIONS,
MAKES NO RECOMMENDATIONS, OR TAKES NO ACTION AT THIS MEET-
ING. U.S. REP MAY ALSO AGREE THAT COUNCIL KEEP ZENITH
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UNDER REVIEW AS APPROPRIATE.

(D) SHOULD, AS APPROPRIATE, ASK THAT PARAGRAPH IN PARA.
4 ABOVE BE INCLUDED IN RECORD OF THE COUNCIL'S PROCEEDINGS.

6. REGARDING ITEM ON SWEDISH MEASURES ON BEER,
INSTRUCTIONS ALREADY SENT SEPTTEL. VANCE

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Message Attributes

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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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Original Handling Restrictions: n/a
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Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2170653
Secure: OPEN
Status: NATIVE
Subject: INSTRUCTIONS FOR JUNE 16 MEETING OF GATT COUNCIL
TAGS: ETRD, JA, GATT, MTN, ZENITH
To: GENEVA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/cfb7c97d-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009